

FCC MAIL SECTION

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Federal Communications Commission

DA 98-1873

DISC 110

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of )  
 )  
Amendment of Section 73.202(b), ) MM Docket No. 97-168  
Table of Allotments, ) RM-9103  
FM Broadcast Stations. ) RM-9182  
(Arcadia, Ellington, & Marble Hill, )  
Missouri, Carbondale & Steeleville, )  
Illinois, and Tiptonville, Tennessee)<sup>1</sup> )

**REPORT AND ORDER**  
**(Proceeding Terminated)**

**Adopted: September 9, 1998**

**Released: September 18, 1998**

By the Chief, Allocations Branch:

1. The Commission has before it for consideration the Notice of Proposed Rule Making, 12 FCC Rcd 11388 (1997), issued in response to a petition filed by Iron County Broadcasting Company ("Iron County"). The Notice proposed the allotment of Channel 269A to Arcadia, Missouri, as that community's first local FM broadcast service. Iron County filed comments restating its intent to file an application for Channel 269A at Arcadia.<sup>2</sup> Columbia, FM, Inc. ("CFI"),<sup>3</sup> New Life Evangelistic Center, Inc. ("New Life"), and Twin States Broadcasting, Inc. ("Twin States") filed comments. Lyle Broadcasting Corporation ("Lyle") filed a

<sup>1</sup> The communities of Carbondale and Steeleville, Illinois, Marble Hill and Ellington, Missouri, and Tiptonville, Tennessee, have been added to the caption.

<sup>2</sup> In response to the *Notice*, Iron County states that there is privately owned land available for a transmitter which will be in full compliance with the Commission's Rules, outside of the Mark Twain National Forest and the Taum Sauk Mountain State Park.

<sup>3</sup> CFI, licensee of Station KPLA, Columbia, Missouri, operates on Channel 268C2. CFI states that it filed an application under Section 73.215 of the Commission's Rules to upgrade to a C1 facility (BPH-930813IC) and believes the allotment of Channel 269A at Arcadia will have an indirect effect on its application. CFI has proposed the allotment of Channel 224A at Arcadia which requires the substitution of Channel 240C3 for Channel 224A or 225A at Ironton, Missouri. Although B.B.C., Inc. and Dockings Communications, Inc. filed a joint proposal in MM Docket 97-136, 12 FCC Rcd 6559 (1997), which did propose the allotment of Channel 240C3 at Ironton, the proposal did not constitute a counterproposal and was dismissed in the Report and Order which was released on April 3, 1998 (13 FCC Rcd 6584 (1998)). CFI did not file comments or a counterproposal in MM Docket 97-136.

counterproposal.<sup>4</sup> Reply comments were filed by Iron County, Terry Hailey ("Hailey") and Lyle.

2. Lyle, licensee of Station WCIL-FM, Carbondale, Illinois, submitted a counterproposal in response to the *Notice* that offered the following four alternative solutions:

Option 1			Option 2		
	Current	Proposed		Current	Proposed
Tiptonville, TN	267C3	267C3 <sup>5</sup>	Tiptonville, TN	267C3	267C3
Carbondale, IL	268B	268C1	Carbondale, IL	268B	268C1
Arcadia, MO	-----	247A	Arcadia, MO	-----	280A
Marble Hill, MO	247A	228A	Ellington, MO	280A	294A

  

Option 3			Option 4		
	Current	Proposed		Current	Proposed
Tiptonville, TN	267C3	267C3	Tiptonville, TN	267C3	267C3
Carbondale, IL	268B	-----	Carbondale, IL	268B	-----
Steeleville, IL	-----	268C1	Steeleville, IL	-----	268C1
Arcadia, MO	-----	247A	Arcadia, MO	-----	280A
Marble Hill, MO	247A	228A	Ellington, MO	280A	294A

Lyle argues that its proposed changes in the FM Table of Allotments would serve the public interest by providing new service to Arcadia as well as additional and improved service to a large number of people. Lyle points out that its proposed Channel 268C1 facility at Carbondale would be able to serve 52.6 percent more people than its current facility with no countervailing public interest detriment. Lyle believes that the use of an alternate channel at Arcadia will not affect the initiation of a first local service in the community and the proposed site restriction on Channel 267C3 will not unduly limit the use of that channel in Tiptonville. Further, the proposed substitutions at either Marble Hill or Ellington will have no public interest drawbacks because whichever option is adopted provides an equivalent class channel. Lyle continues that the channel change would cause no disruption as construction permits for unbuilt stations are currently outstanding at both Marble Hill and Ellington. Lyle states that it will reimburse the expenses of the permittees at both communities in connection with the proposed change in channels in accordance with the Commission's Rules and policies.

<sup>4</sup> Public notice of the counterproposal was given on November 29, 1997, Report No. 2239 (RM-9182). The use of Channel 268C1 at Carbondale or Steelville, Illinois, is in direct conflict with the proposed allotment of Channel 269A at Arcadia.

<sup>5</sup> Lyle has proposed a site restriction on vacant Channel 267C3 at Tiptonville, Tennessee, in lieu of a channel change, to accommodate its counterproposal. The *Notice* in MM Docket 96-204 has proposed the deletion of vacant Channel 267C3 at Tiptonville to accommodate the substitution of Channel 267C3 for Channel 269A at Martin, Tennessee. See 11 FCC Rcd 12695 (1996). See *infra* note 9.

In the event the Commission will not impose a site restriction at Tiptonville, and in the event the allotment is not deleted in MM Docket 96-204, Lyle alternatively proposes, in Options 3 and 4, to substitute Channel 268C1 for Channel 268B at Carbondale and reallocate the channel to Steeleville, Illinois, as a first local broadcast service. In support of the change of community, Lyle states that Carbondale would not be deprived of its only local transmission service, as Station WCIL(AM) and noncommercial educational stations WDBX(FM) and WSIU(FM) would remain. Lyle believes that Steeleville is a community deserving of an allotment for its own local broadcast service. The community has a population of 2,059 people according to the 1990 Census, with its own post office and zip code and numerous businesses and is served by the Union Pacific Railroad. Lyle points out that the upgrade of Station WCIL-FM and relocation to Steeleville would require a channel change for Arcadia and a change at either Marble Hill or Ellington as shown above. Lyle believes that adoption of one of its proposals will provide the best arrangement of allotments and service to the public. Lyle has stated its intention to file an application for Channel 268C1 at Carbondale or Steeleville and promptly construct the station.

3. New Life, permittee of Station KAUL, Ellington, Missouri, filed a petition for rule making on October 29, 1997, requesting the substitution of Channel 280A for Channel 294A at Ellington. New Life states that the channel change will permit Station KAUL to be constructed as a six kilowatt station instead of a three kilowatt station. According to New Life, Station KAUL is currently short spaced under Section 73.207 to Station KPOC, Pocahontas, Arkansas, and in order to achieve the power increase, it is necessary to change its channel. New Life acknowledges the counterproposal filed by Lyle requesting a channel change for Station KAUL. Although New Life states that it finds it appealing that harmonious results may be achieved by Lyle's counterproposal, its rulemaking should not be tied to MM Docket 97-168 as two options of the counterproposal do not involve Ellington.

4. The following comments were received in response to the counterproposal filed by Lyle. Twin States expressed its interest in Channel 267C3 at Tiptonville. Twin States points out that it is a party to the Rule Making in MM Docket No. 96-204 (Martin and Tiptonville, Tennessee) where it has argued that Channel 267C3 at Tiptonville should not be deleted or downgraded to Channel 247A. Twin States advises the Commission that it will file an application for Channel 267C3 at Tiptonville even if the site restriction proposed by Lyle is adopted in this proceeding. Twin States further states that it has no interest in applying for a Tiptonville station which would operate on Channel 247A, with or without a site restriction. Iron County filed comments objecting to Lyle's counterproposal arguing that it is untimely with respect to changes at Tiptonville and should have been filed in MM Docket 96-204 instead of this proceeding. Iron County contends that statements of interest for Channel 267C3 at Tiptonville were filed by Twin States and Hailey and neither of those parties requested a site restriction on the channel. Therefore, Lyle should have advanced its site restriction proposal for Tiptonville in a timely manner in MM Docket 96-204 rather than attempting to tie the proceedings together. Iron County also argues that Lyle has failed to provide reimbursement commitments for the permittees at Marble Hill and Ellington, making its proposal defective. With respect to Lyle's proposal to reallocate Channel 268 from Carbondale to Steeleville, Iron

County contends that Carbondale would be without a full-time commercial station as WCIL-AM operates on 1020 kHz and must sign off at dusk in order to protect clear channel Station KDKA(AM), Pittsburgh, Pennsylvania. Further, according to Iron County, logic dictates that a fair, efficient and equitable distribution of broadcast facilities does not take place when the only commercial station is removed from a community of 27,033 people and moved to a community with a population of 2,059 people. Hailey comments that Lyle's counterproposal may serve various communities in Tennessee, Illinois and Missouri and, at the same time, help open up Channel 267C3 for applications.<sup>6</sup> Hailey has stated his intention to file an application for Channel 267C3 at Tiptonville, even if a site restriction is imposed on the channel.

5. Based upon the information presented in this proceeding, we believe the public interest would be served by the allotment of an FM channel at Arcadia, Missouri, as well as improved service at Carbondale, Illinois. In consideration of the counterproposal filed by Lyle, we shall allot Channel 280A to Arcadia, Missouri, in lieu of Channel 247A. Channel 280A can be allotted to Arcadia, Missouri, in compliance with the Commission's spacing requirements provided there is a site restriction 9.3 kilometers (5.8 miles) southwest of the community.<sup>7</sup> The site restriction will prevent a conflict with Station WXAN, Channel 280A, Ava, Illinois, and Station KMHM, Channel 281A, Lutesville, Missouri. At this moment, Channel 280A at Arcadia is short spaced to Channel 280A at Ellington, Missouri. However, as part of the counterproposal filed in this proceeding, we shall also make a substitution at Ellington to remove the conflict. The counterproposal presented four options to achieve improved service at Carbondale, Illinois. Our analysis concludes that Option 2 appears to cause the least amount of disruption to the listening public while affording new service to Arcadia and Tiptonville, and expanding service at Carbondale, Illinois and Ellington, Missouri. Therefore, we shall substitute Channel 268C1 for Channel 268B at Carbondale, Illinois, and modify the license for Station WCIL-FM to specify operation on Channel 268C1 in accordance with Section 1.420(g) of the Commission's Rules, as requested by Lyle.<sup>8</sup> To accommodate the allotment of Channel 268C1 at Carbondale we shall impose a new site restriction on vacant Channel 267C3 at Tiptonville, Tennessee.<sup>9</sup> Finally, we shall substitute Channel 294A for Channel 280A at Ellington,

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<sup>6</sup> Hailey was the permittee for Channel 267C3 at Tiptonville, which was awarded a construction permit on March 15, 1995, but was cancelled by the Commission on October 27, 1995.

<sup>7</sup> The coordinates for Channel 280A at Arcadia are 37-32-30 and 90-43-00.

<sup>8</sup> The coordinates for Channel 268C1 at Carbondale are 37-37-00 and 89-38-30. Station WCIL-FM can upgrade from a Class B to a Class C channel because it is relocating its transmitter site from Zone 1 to Zone 2. See 47 C.F.R. Section 73.210(a) of the Commission's Rules.

<sup>9</sup> The new coordinates for Channel 267C3 at Tiptonville are 36-19-41 and 89-23-18 in lieu of 36-22-42 and 89-28-30. The Report and Order in MM Docket 96-204 did not delete the channel at Tiptonville, which was requested to accommodate an upgrade at Martin, Tennessee, as two parties filed comments stating their intention to file applications for the channel. See Report and Order adopted September 2, 1998 (DA No. 98-1799).

Missouri, and modify the construction permit for Station KAUL accordingly.<sup>10</sup> Since New Life Evangelistic Center, Inc., the permittee for Station KAUL, filed a petition for rule making requesting the substitution of Channel 294A for Channel 280A at Ellington, a separate Order to Show Cause was not issued to New Life.<sup>11</sup> Rather, the petition has been accepted and regarded as consent by New Life for the channel substitution. Lyle has stated its intention to reimburse the permittee of Station KAUL, Ellington, Missouri, for the reasonable expenses incurred in changing channels.

6. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective November 2, 1998, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the communities listed below, as follows:

Community	Channel Number
Arcadia, Missouri	247A
Carbondale, Illinois	268C1
Ellington, Missouri	294A

7. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license for Station WCIL-FM, Carbondale, Illinois, IS MODIFIED to specify operation on channel 268C1 in lieu of channel 268B, subject to the following conditions:

(a) within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

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<sup>10</sup> The coordinates for Channel 294A at Ellington are 37-13-27 and 90-51-13.

<sup>11</sup> New Life filed the petition for rule making on October 29, 1997.

8. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the construction permit for Station KAUL, Ellington, Missouri, IS MODIFIED to specify operation on Channel 294A in lieu of Channel 280A, subject to the following conditions:

(a) Nothing contained herein shall be construed as authorizing any change in permit BPH-970327MG except for the channel as specified above. Any changes, except those specified require prior authorization pursuant to an application for construction permit (FCC Form 301).

(b) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the rules, provided the transmission facilities comply in all respects with permit BPH-970327MG, except for the channel as specified above, and a license application (Form 302) is filed within 10 days of commencement of program tests.

9. IT IS FURTHER ORDERED, That the Commission's Office of Public Affairs, Reference Division, shall send by Certified Mail, Return Receipt Requested, a copy of this Order to the following:

John H. Midlen, Jr.  
Midlen Law Center  
3238 Prospect Street, NW  
Washington, d. C. 20007-33214  
(counsel for New Life Evangelistic Center, Inc.)

10. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change in community of license of an FM or television allotment or an upgrade of an existing FM allotment, **if the request is granted**, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Lyle Broadcasting Corporation, licensee of Station WCIL, is required to submit a rule making fee in addition to the fee required for the applications to effect the upgrade at Carbondale, Illinois.

11. A filing window for Channel 280A at Arcadia, Missouri, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

12. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

13. For further information concerning the above, contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180. Questions related to the window application filing process for Channel 280A at Arcadia, Missouri, should be addressed to the Audio Services Division, Mass Media Bureau, (202) 418-2700.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau